

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

THE TRUSTEES OF PURDUE
UNIVERSITY,

Plaintiff,

v.

STMICROELECTRONICS N.V.,
STMICROELECTRONICS
INTERNATIONAL N.V., and
STMICROELECTRONICS, INC.,

Defendants.

Civil Action No. 6:21-CV-00727-ADA

DEMAND FOR JURY TRIAL

**DEFENDANT STMICROELECTRONICS INTERNATIONAL N.V.'S
OPPOSED MOTION FOR LEAVE TO FILE SUR-REPLY**

On May 25, 2022, Plaintiff The Trustees of Purdue University's ("Purdue") filed its Reply in Support of its Motion for Entry of Default, in which it advances, for the first time: an argument that Defendant STMicroelectronics International N.V. ("ST-Int'l" or "Defendant") acted in bad faith, a request for fees, and an unfounded demand to arbitrarily compress Defendant's answer date to June 6, 2022 (e.g., 12 days from the date of Plaintiff's Reply). Plaintiff could have presented its *new* arguments, request, and demand in its motion, but chose not to do so. There was no reason for Plaintiff to hold back these arguments and evidence from the Court and Defendant until the reply stage—especially because Defendant shared with Plaintiff the reasons its attempted service is defective *before* Plaintiff filed its motion. Because Defendant was deprived of the opportunity to address Plaintiff's new arguments, request, and demand, ST-Int'l respectfully requests leave to submit the attached 4-page Sur-reply Brief to address Plaintiff's Reply.

**DEFENDANT STMICROELECTRONICS INTERNATIONAL N.V.'S OPPOSED MOTION
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ARGUMENT

A supplemental brief is appropriate where a litigant “raises new legal theories or attempts to present new evidence at the reply stage.” *ENGlobal v. Native Ams. Servs. Corp.*, No. H-16-02746, 2017 WL 3840262, at *2 (S.D. Tex. Sept. 1, 2017). That is effectively what has happened here—Plaintiff has raised new arguments and evidence at the reply stage. This tactic is at odds with at least the spirit, if not the letter, of Local Rule CV-7D.

Here, Plaintiff raised for the first time, the following evidence and arguments supporting its motion for entry of default judgment:

- An explanations for a previously unacknowledged defect in its service (i.e., “typographical errors”) in Purdue’s attempted service on STInt’l, Dkt. 97-1 at 2 n.3 (Ex. 1 to Reply);
- A request for attorney fees and costs—which did not include the alleged fees and costs—incurred by the Shore Chan firm to comply with the Court’s Order, *id.* at 4;
- Contacts with STInt’l’s “former counsel,” *id.* at 2 n.3;
- An alleged stipulation—not attached to the reply—which proffered an alleged conditional alternative service agreement, Dkt. 97 at 3; and
- Legal argument to arbitrarily condense Defendant’s answer dates based on Plaintiff’s motion for entry of default judgment, *id.* at 3.

By shielding its arguments, request, and demand until the Reply stage, Plaintiff deprived Defendant of an appropriate opportunity to address them. In particular, Purdue newly advances a “bad faith” allegation against ST-Int’l, a claim for fees, and a request for remedy to arbitrarily compress the period for Defendant to respond to the Complaint. Through its Reply Plaintiff presents an array of new unsupported legal theories and evidence, a number of which are

contradicted by the record. Defendant should be given an opportunity to address Plaintiff's unfounded arguments.

CONCLUSION

For the foregoing reasons, Defendants respectfully request leave to file the Sur-reply Brief attached hereto as Exhibit A.

Dated: May 31, 2022

Respectfully submitted,

/s/ John M. Shumaker

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**PHV application to be submitted*

***Attorneys for Defendant
STMicroelectronics International
N.V.***

CERTIFICATE OF CONFERENCE

On May 31, 2022, John Shumaker, counsel for Defendant, and Michael Shore, counsel for Purdue, met and conferred by email and telephone regarding the Defendant's request for leave to file a 5 page Sur-Reply. On behalf of Purdue, Mr. Shore agreed not to oppose Defendant's filing a 5 page Sur-Reply (that did not introduce new evidence) on the condition that Purdue would be allowed to file a 3-page answer brief. Defendant's lead counsel rejected that proposal. The motion for leave is therefore filed as opposed.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing document was served on all parties to this action by the Court's ECF system on the 31st day of May, 2022.

/s/ John M. Shumaker

John M. Shumaker